

[Waiver 1996-11]

September 17, 1996

Jennie Gosche, LSCW-C
[Address withheld]

Re: Request for Advisory Opinion/Waiver

Dear Ms. Gosche:

You have requested advice from the Ethics Commission regarding your interest in applying for a contract with the County while you are a County employee. You have provided the following information.

Currently, you are a full-time merit employee with the Montgomery County Department of Health and Human Services (HHS), in the Office of Child and Adolescent Community Support Services. You wish to apply for a contract position with the Abused Persons Program in HHS and would resign from your current position if you were awarded the contract. For purposes of this advice, the Commission is assuming that your current duties do not require you to prepare the requests for proposals (RFPs) or to review any applications for the contract. Also, it is assumed that all applicants will be given the same information upon which to base their applications.

As you may know, a public employee generally is prohibited from submitting a bid for a County contract with the employee's agency. Section 19A-12(b)(1)(B) of the Montgomery County Code 1994, as amended, prohibits an employee from negotiating or contracting with his own County agency. The exceptions to this section do not apply to your current situation. However, the prohibition may be waived upon a finding by the Ethics Commission that the following criteria have been met:

- (1) the waiver is needed to ensure that competent services to the County are timely and available;
- (2) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified public employees; or
- (3) the proposed employment is not likely to create an actual conflict of interest.

Section 19A-8(b) of the Montgomery County Code 1994, as amended.

Based upon the information described above, the Ethics Commission finds that the criteria have been met and that a waiver may be granted. The proposed employment is not likely to create an actual conflict of interest. You will not be involved in preparing or reviewing the RFP or applications. Furthermore, all competitors will have access to the same information. Finally, you will resign from County employment upon receiving the

award. The Ethics Commission, therefore, grants you a waiver to apply for the contract with the following conditions:

- (1) You may not participate in the evaluation of any of the applications under the RFP in your capacity as a public employee.
- (2) You may not use any confidential information from your public employment to assist you in applying for or obtaining the award of the contract.
- (3) You must resign from your public employment if the contract is awarded to you.

If you have any questions, please do not hesitate to contact the Ethics Commission.

Sincerely,

[signed]

Laurie Horvitz, Chair